IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1282 OF 2006

Santosh Shivaji Pawar & Ors. ..Petitioners

Vs.

The State of Maharashtra & Ors. ..Respondents

Mr.H.S.Venegaonkar for the petitioners

Mr.Dilip Bodke for respondent no.2

Mrs.A.S.Pai, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 4TH SEPTEMBER, 2006

P.C.:

1. Heard.

2. The petitioners have approached this court assailing the appointment of Public Prosecutor to conduct the trial in the court of Sessions at Satara. Their main contention is that the appointment is contrary to Rule 22 of the Maharashtra Rules for engagement of a Special Public Prosecutor. It is submitted that these rules came to be amended in view of the decision of

the Supreme Court which held that Special Public Prosecutor should not be made available to private complainant and accordingly the rules has been amended.

3. In addition to raising this as an issue lot of other allegations are made in the petition which are not relevant for our consideration.

4. The respondents have filed their reply and it is the stand of the state that the petitioner Public Prosecutor came to be appointed on 10.9.04 under the Maharashtra Law Officers Appointment, Conditions of Service and Remuneration (Rules) 1984 whereas the amendment came subsequently and that the appointment fulfils the condition prescribed under section 24 of the Code of Criminal Procedure, 1973.

5. The Special Public Prosecutor has also filed his affidavit in reply giving the facts and circumstances which led to his appointment as a Special Public Prosecutor.

6. We are informed by the learned counsel appearing for the Special Public Prosecutor that the trial is concluded and the matter is now listed for arguments on 7.9.06. The learned counsel for the petitioners also raised an issue that the Special Public Prosecutor is highly interested in the case being a relative of the Complainant which has been brought on record in the cross-examination of the witness himself.

7. The learned counsel for the petitioners has not be able to point out to this court that assuming certain irregularities have been committed by the respondent state in appointment of Special Public Prosecutor, how the accused persons facing the trial have been prejudiced. Further in what manner the trial was not conducted in just and fair manner and in view of the fact that the trial is almost concluded as the case is now fixed for arguments it will not be proper on our part to interfere in the matter.

8. Needless to state that in case the petitioners who are accused in the trial are

convicted they can very well take this as a ground in appeal.

9. In so far as whether the appointment of Special Public Prosecutor was in accordance with the rules or not and in consonance with the Judgment of the Supreme Court, now merely remains an academic question which we find is not necessary to be decided in this petition as the trial is almost concluded. Therefore, we dispose of the petition without expressing anything on the merits of the matter. Petition disposed of accordingly.

(SHRI J.N. PATEL, J)

(SMT.ROSHAN DALVI, J)